

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

15-CR-6168L

v.

BRIAN PATTERSON,

Defendant.

---

This Court referred all pretrial motions to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b). Defendant is charged with several firearms offenses in a superseding indictment. Defendant moved to suppress statements and also moved to dismiss either Count 2 or Count 3 of the superseding indictment as multiplicitious. The Magistrate Judge issued a thorough Report and Recommendation (Dkt. #20). The Magistrate Judge denied defendant's request to hold a suppression hearing on the grounds his statements were involuntary. The Court also denied defendant's motion to dismiss counts of the indictment as multiplicitious without prejudice to renew before the District Court. Defendant filed an Objection (Dkt. #21) to the Report and Recommendation and the Government filed a Response (Dkt. #25) to defendant's Objection.

## DISCUSSION

The issue now before this Court is a narrow one. As developed before the Magistrate Judge, the facts established that Rochester Police Officers questioned the defendant at the scene of his arrest and later at the Public Safety Building. The statements were apparently made in the apartment complex where defendant resided, in a police vehicle at the scene of the arrest and later in the interrogation room at the Public Safety Building.

Rather than contest whether proper *Miranda* warnings were given, the Government advised the Magistrate Judge that it elected not to use any of the defendant's statements in the Government's case in chief. The Government, however, did indicate that it reserved the right to use the statements to impeach the defendant should he testify at trial and should that testimony be inconsistent with statements allegedly made by the defendant.

Defense counsel still argued that the Magistrate Judge was required to hold a suppression hearing in order to determine whether the statements made were voluntary. Magistrate Judge Feldman rejected the defendant's claim that the Court must hold a hearing to determine whether the statements made by the defendant were voluntary. The Magistrate Judge cited several cases that stand for the proposition that an evidentiary hearing is only required if the defendant's moving papers raise a "sufficiently definite, specific, detailed, and nonconjectural" issue of fact. (Report and Recommendation, p. 6). Magistrate Judge Feldman found, consistent with the wealth of authority cited, that defendant Patterson failed to raise a sufficiently definite and specific issue of fact that would require a suppression hearing. As the Magistrate Judge pointed out, defendant's motion papers provided nothing more than a blanket statement that his

statements were taken involuntarily. The Magistrate Judge determined that such a conclusory statement was not enough to raise a factual issue requiring a suppression hearing.

Based on the facts presented, I agree with the Magistrate Judge's Report and Recommendation and find that no suppression hearing was necessary or warranted based on the lack of any factual issues requiring resolution. Nothing was presented in the moving papers to suggest that defendant's statements were anything other than voluntary. The Magistrate Judge cited ample authority to support his position, and I believe that the Magistrate Judge correctly analyzed those cases and the conclusion reached by them that no suppression hearing was required.

Concerning defendant's claim that some counts are multiplicitous, the Magistrate Judge denied the motion without prejudice and suggested that the parties may wish to revisit the matter before the trial judge, should the matter proceed to trial.

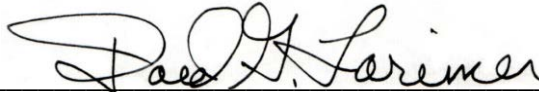
### **CONCLUSION**

I accept and adopt the Report and Recommendation (Dkt. #21) of United States Magistrate Judge Jonathan W. Feldman. After reviewing the Report and Recommendation, the Objection to it, and the Government's Response to the Objection, I find no basis to alter, modify or reject the Magistrate Judge's Report and Recommendation and, therefore, I accept it in full.

Defendant Brian Patterson's motion to conduct a suppression hearing to determine whether his statements to the police were involuntarily is denied.

Defendant's motion to dismiss certain counts of the indictment as multiplicitious is denied without prejudice to renewal before the trial court should the case proceed to trial.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is positioned above a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
November 10, 2016.